

Rye City Planning Commission Minutes

October 14, 2003

PRESENT:

Michael Klemens, Chairman
Barbara Cummings, Vice-Chair
Hugh Greechan
Peter Larr
Martha Monserrate

ABSENT:

Franklin Chu
Patrick McGunagle

ALSO PRESENT:

Christian K. Miller, AICP, City Planner

I. HEARINGS

1. 30 High Street (Continued)

Greg DeAngelis (applicant's architect) noted that the project involved a 3-lot subdivision. Two of the proposed lots on the rear of the property would be used for two-family dwellings. The third lot located along High Street would be used as a service business. Mr. DeAngelis noted changes in the plan based on an informal discussion with the City's Board of Architectural Review. Among those changes Mr. DeAngelis noted that the orientation of the proposed service building was modified to provide for an increase in the setback of the building from the front property line by approximately two-feet. Mr. DeAngelis noted that the height of the service building was reduced and more landscaping was provided on the property. Mr. DeAngelis stated that this revision was possible pursuant to the rear yard set back provision not applying to properties having a depth of less than 60 feet.

Mr. DeAngelis noted that the plan was revised to include a common driveway with a one-way circulation pattern. He noted that this revision allowed for improved parking and vehicle circulation and for additional landscaping opportunities.

Mr. DeAngelis stated that in response to the comments of the Rye City Engineer that the location of the existing City drainage and sewer lines were surveyed based on soil borings. The site plan was also revised to provide additional topographic information.

Lori Pellegrini (47 High Street property owner) stated that she was pleased with the most recent revisions in the site plan but continued to express concern regarding the amount of development on the property. Ms. Pellegrini suggested that three buildings on the subject site exceeded what the neighborhood could accommodate. She noted

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1 that High Street is a narrow street that is heavily traveled and has increased traffic
2 problems as a result of the office building located at the end of High Street being
3 converted to a physical therapy office. She noted that the physical therapy facility
4 results in traffic occurring throughout the day rather than just in the morning and
5 afternoon peak hours as with the previous office use. Ms. Pellegrini added that the site
6 would be located in an area that is frequented by children including a park located
7 across the street. She stated that the project would bring more traffic and congestion
8 into an already congested area.
9

10 Resident of 47 High Street stated that she was pleased with the new plan but that the
11 proposed number of buildings was excessive. She suggested that fewer buildings
12 would be more appropriate for the neighborhood. The resident also stated that the
13 property is currently not well maintained and that she hoped the future use of the
14 property will be improved. Pat Iorillo (resident of 69 Maple) stated that there have been
15 disputes regarding business operations in the neighborhood and that he is concerned
16 regarding the of storage construction materials on the property. He stated that this
17 could continue to be a problem after the business use is approved for the site.
18

19 Mr. DeAngelis responded to the public comments by stating that the proposed
20 application complies with the requirements of the City's Zoning Code. He noted that
21 additional parking spaces over the minimum required were added to the site plan to
22 address parking concerns. Mr. DeAngelis stated that the character of the neighborhood
23 would be preserved and that the locations of the buildings are consistent with the
24 established neighborhood pattern. With respect to the current condition of the site, Mr.
25 DeAngelis stated that the property owner has not been maintaining the property in
26 expectation of Planning Commission approval and future development of the property.
27 He noted that after the service business is approved all equipment and materials will be
28 stored indoors.
29

30 On a motion made by Peter Larr, seconded by Barbara Cummings and carried by the
31 following vote:
32

33 AYES: Michael Klemens, Barbara Cummings, Hugh Greechan Peter Larr, Martha
34 Monserrate

35 NAYS: None

36 RECUSED: None

37 ABSENT: Franklin Chu, Patrick McGunagle
38

39 the Planning Commission took the following action:
40

41 ACTION: The Planning Commission closed the public hearing on final subdivision
42 application number SUB281 and site plan and use permitted subject to
43 additional standards and requirements application number SP275.
44
45

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2. Rattner Residence (Continued)

A full transcript of the public hearing comments is on file in the City Planners office.

On a motion made by Peter Larr, seconded by Barbara Cummings and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Hugh Greechan Peter Larr, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Franklin Chu, Patrick McGunagle

the Planning Commission took the following action:

ACTION: The Planning Commission closed the public hearing on wetland permit application number WP133.

3. Beechert

Chairman Klemens read the public notice.

Scott Beechert (property owner and applicant) noted that the application involves permit to maintain a fence in the northwest corner of a property located at 61 Midland Avenue. Mr. Beechert stated that he is also requesting to install a gate across the driveway located in the front yard. Mr. Beechert provided an overview of the history of the application noting that he received a fence permit from the City of Rye as required by law. He added that this permit was later discovered by the City to be issued in error since a wetland permit was also required. Construction on the fence was halted after being partially installed.

Mr. Beechert stated that his property is an 80-foot by 80-foot square lot and that the fence was necessary to address aesthetic and safety concerns. Mr. Beechert stated that the fence was located adjacent to the steepest part of the bank adjacent to the brook located on the rear of his property. He stated that the fence would screen an unsightly storm pipe located behind his property.

Jim Powers (adjacent resident) stated that he lives immediately behind the applicant and that he was concerned that the proposed fence would impact flood conditions on his property. He noted that his property is subject to flooding and that the proposed fence may aggravate flood flows. Mr. Powers stated that he was responsible for providing wetland plantings in connection with a building addition that he is undertaking and that he did not want these plantings to be adversely impacted by the proposed fence and flood problems. Mr. Powers added that the existing fence appears to be raised 8 inches above the grade and that it was his opinion this would be sufficient to

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1 address flooding concerns. Mr. Powers stated that he has approached the City Council
2 in the past to address the flooding conditions on his property and has suggested that
3 the brook be piped to address this concern.
4

5 Scott Beechert responded that he has seen the flooding in his neighbor's yard but
6 stated that the portion of the property where the fence is located would be substantially
7 higher than the Powers property. Mr. Beechert suggested that given the location of the
8 fence on the highest point of his property that it would not adversely impact flooding
9 conditions on the Powers property.
10

11 On a motion made by Barbara Cummings, seconded by Peter Larr and carried by the
12 following vote:
13

14 AYES: Michael Klemens, Barbara Cummings, Hugh Greechan Peter Larr, Martha
15 Monserrate

16 NAYS: None

17 RECUSED: None

18 ABSENT: Franklin Chu, Patrick McGunagle
19

20 the Planning Commission took the following action:
21

22 ACTION: The Planning Commission closed the public hearing on wetland permit
23 application number WP139.
24

25 4. Walker 26

27 Chairman Klemens read the public notice.
28

29 Linda Whitehead (applicant's attorney) noted that the application involved a request for
30 final subdivision plat approval for property located at 179 Forest Avenue. Ms.
31 Whitehead indicated that the application received preliminary approval from the
32 Planning Commission for a three-lot subdivision. Ms. Whitehead noted that there were
33 four public sessions during the public hearing and that the plan was revised in response
34 to public comment. Ms. Whitehead noted that the final application is substantially
35 consistent with the preliminary approval. The only changes that were made to the plan
36 were those that were required as a condition of prior preliminary approval. Ms.
37 Whitehead concluded by noting that drafts of the proposed restricted covenants were
38 provided to the Planning Commission and neighbors for their review and comment.
39

40 Ty Ralli (Rockridge resident) requested that the restrictive covenant language be
41 revised to prohibit the placement of any structure within the restricted landscape areas.
42 He noted that the restriction for this area should be identical to that required for the
43 wetland buffer restricted areas shown on the plat.
44

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On a motion made by Barbara Cummings, seconded by Martha Monserrate and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Hugh Greechan, Peter Larr, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Franklin Chu, Patrick McGunagle

the Planning Commission took the following action:

ACTION: The Planning Commission closed the public hearing on final subdivision application number SUB272.

II. ITEMS PENDING ACTION

1. 30 High Street

The Planning Commission discussed the comments of the City Board of Architectural Review. The BAR noted that the applicant should consider further modifications to the site plan to provide a common driveway configuration that serves as access for all three properties. The Commission disagreed with this suggestion, noting that a common driveway configuration for all three properties would involve mixing commercial and residential traffic. The mixing of such traffic was deemed undesirable by the Planning Commission and it recommended keeping the site plan as proposed to provide separate vehicle access for the service business property.

The Planning Commission noted that the most recent revisions improved the application and that it found the revised site plan acceptable. The Commission directed the applicant to address any drainage concerns regarding the proposed development with the City Engineer and to provide a subdivision plat with accompany easements for the Planning Commission's consideration.

The Commission discussed the current condition of the property. Greg DeAngelis (applicant's architect) stated that the applicant intends to enhance the property upon completion of the project. The City Planner noted that pursuant to the requirements of the Rye City Zoning Code, construction vehicles and materials are required to be stored indoors.

The Commission noted that it would consider approval of the application subject to the applicant submitting requested additional information.

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2. Rattner

The Commission discussed the applicant's statement in the public hearing that it has the right to reconstruct/rehabilitate the existing breakwater/peninsula "as-of-right" without the need for a Wetland Permit. The Planning Commission agreed with the applicant's position that the existing structure could be restored to its prior condition without the need for a wetland permit since it was exempt by the City's Wetlands Law. Dan Natchez (applicant's consultant) stated that the applicant submitted plans showing the rehabilitation of the existing breakwater/peninsula with no change in elevation or the proposed dock and that that application was approved by the City Naturalist as exempt from the City Wetland Law.

The Commission discussed the difference between the as-of-right application and the proposed rehabilitation, which involves increasing the height of the existing breakwater/peninsula by up to 3.2 feet and installing a proposed dock. Jonathan Kraut (applicant's attorney) agreed with this approach to the review of the application and stated that the Commission should review the proposed project based on the criteria in the Rye City Wetlands Law.

The Planning Commission debated the environmental benefit/consequence of the proposed increase in elevation and dock. Mr. Natchez stated that the applicant's submission includes a variety of documentation prepared by professionals that support the environmental benefit of the project. The City Planner questioned whether the footprint of the peninsula would change. Mr. Natchez responded that depending on interpretation the overall footprint of the breakwater would be reduced by either 3,000 or 7,000 square feet.

The Commission discussed with the applicant and the City Planner the SEQRA classification of the proposed project and whether it was subject to LWRP Coastal Consistency Review. The City Planner noted that the application was being processed assuming that it was an Unlisted Action under SEQRA and therefore subject to LWRP Coastal Consistency determination. The City Planner added that the applicant has stated in its most recent submission that it does not agree with this determination but that it is consenting to the continued processing of the application assuming Unlisted Action status but that it is "reserving all rights" to challenge this decision at a later date.

The Commission discussed the impact of the proposed dock on the further privatization of Rye's waterfront and whether the proposed dock would displace existing moorings located at the end of the Rattner breakwater/peninsula. Mr. Natchez responded that approximately the 50 moorings identified in the area that only three have received approval from the City of Rye and that those three moorings were approved for the Rattner's and that all other moorings in the area appeared to have been installed illegally. In any event, Mr. Natchez explained that there would be no displacement of these existing moorings. Planning Commission members noted that some of these illegal moorings were being addressed and some may have already been relocated.

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1 Mr. Natchez stated that the proposed dock would not obstruct the federal channel or
2 contribute to impeding the flow of recreational boats in Long Island Sound. The
3 Commission noted that some of the illegal moorings maybe contributing to crowding
4 within the waterway. The Commission concluded that it did not appear based on the
5 information provided by the applicant that the proposed dock would impede recreational
6 access to Long Island Sound and would not create a navigational hazard. The
7 Commission also noted based on information provided by the applicant, that the
8 proposed dock is not disproportionately large relative to other docks in the area. The
9 proposed dock would also be seasonal and would not be visible during the entire year.

10
11 The Commission questioned whether a smaller dock would meet the applicant's needs.
12 Mr. Natchez responded that the dock length was designed to reach waters of sufficient
13 depth to accommodate a vessel. He added that the length of the dock was also
14 somewhat dependent upon the height of the proposed breakwater.

15
16 The Commission discussed with the applicant the assumptions regarding the design of
17 the proposed breakwater/peninsula. Mr. Natchez stated that the design was to address
18 the more frequent, but smaller, storm events (i.e. those storm events having a predicted
19 occurrence of approximately every twenty to thirty years). Mr. Natchez noted that the
20 breakwater would not withstand a 100-year event such as a hurricane. He noted that
21 the construction of such a seawall would require an elevation of seventeen feet and
22 such an improvement would be deemed unreasonable to neighbors and likely the
23 Planning Commission. Mr. Natchez stated that the proposed design would dissipate
24 wave energy better than the existing breakwater and that it would be able to survive
25 smaller storm events including the 1992 Nor'easter. The Commission questioned what
26 sea level rise model was used in the design of the breakwater. Mr. Natchez stated that
27 no sea level rise model was used in the design of the plan but again reiterated that to
28 build a breakwater to meet sea level rise assumptions would result in a tall structure
29 that would be unreasonable to neighbors.

30
31 The Commission questioned the design of the proposed breakwater relative to the
32 existing Port Chester breakwater located within the area. Mr. Natchez stated that the
33 Port Chester breakwater is at about elevation 9.34 and that the proposed Rattner
34 breakwater/peninsula would be about elevation thirteen. Mr. Natchez stated that at the
35 time the Port Chester breakwater was constructed that there was very little design.

36
37 The Commission discussed the historical significance of the breakwater and how those
38 historical concerns can be preserved while also providing an ecological benefit. The
39 Commission discussed the design of the proposed breakwater and its environmental
40 benefits/impact. The Commission noted that the proposed project did not appear to
41 adversely impact ecological resources and that the proposed planting on the top of the
42 breakwater may provide some habitat benefit. The City Planner requested additional
43 information regarding the specifics of the proposed plant material be provided for the
44 Commission's review.

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1 The Planning Commission discussed the comments of the CC/AC as presented in their
2 August 2003 letter. Mr. Natchez stated that the applicant was unsuccessful in its
3 attempts to meet with CC/AC to discuss the application. Mr. Natchez stated that some
4 of the comments of the CC/AC were based on incorrect information. Jim McGee
5 (CC/AC representative) stated that there is continued concern regarding the proposed
6 application and that some of the comments presented in its August 2003 letter are
7 consistent with a report prepared by a professional consultant and provided to the
8 Commission in the applicant's most recent submission. The Commission noted that
9 based on the new information provided by the applicant that it was generally
10 comfortable with the application and that it was inclined to grant approval. The
11 Commission requested, however, that the CC/AC re-assess its prior comments based
12 on the revised plan. The Commission noted that it wanted to give the CC/AC the
13 opportunity to submit revised comments before it rendered a decision on the
14 application. Mr. McGee responded that revised comments would be provided. Mr.
15 Natchez stated that he was willing to meet with the CC/AC to discuss the application in
16 more detail.

17
18 Mr. Kraut stated that time is a concern to the applicant since the construction of the
19 proposed breakwater is to be via a barge. Mr. Kraut stated that the use of a barge
20 would cost between one hundred and two hundred thousand dollars. Mr. Kraut stated
21 that construction by barge was intended to avoid the impact of having construction
22 vehicles on area roadways. Mr. Kraut stated, however, that the barge construction
23 must occur during winter months and if the applicant is to proceed that approval is
24 necessary as soon as possible. Mr. Kraut also stated that the referral to the CC/AC
25 should be limited to the wetland permit application and not to any comments with
26 respect to the LWRP Coastal Consistency. Mr. Kraut stated that LWRP concerns were
27 raised in the CC/AC's prior memorandum and that those concerns are not within the
28 jurisdiction of that board. Mr. Kraut also objected to an additional referral since that
29 was not provided for under the City of Rye Wetlands Law.

30
31 The Commission agreed to wait for amended comments from the CC/AC and
32 requested that the applicant provide a plant list of the proposed plant material on the
33 landscape plan.

3. Beechert

34
35
36
37 The Planning Commission discussed the conditions of the draft resolution of approval
38 noting that the applicant will be required to maintain approximately an 8-inch gap under
39 the fence to address flood water flows and wildlife concern. The Commission noted
40 that the conditions of approval addressed the comments of the CC/AC.

41
42 On a motion made by Martha Monserrate, seconded by Barbara Cummings and carried
43 by the following vote:
44

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1 AYES: Michael Klemens, Barbara Cummings, Hugh Greechan, Peter Larr,
2 Martha Monserrate

3 NAYS: None

4 RECUSED: None

5 ABSENT: Franklin Chu, Patrick McGunagle

6
7 the Planning Commission took the following action:

8
9 ACTION: The Planning Commission adopted a resolution conditionally approving
10 wetland permit application number WP139.

11 12 13 **4. Walker**

14
15 The Planning Commission reviewed the letter of Ty Ralli requesting that the abutting
16 neighbors have the right to enforce the language in the proposed restricted covenants.
17 The Commission noted that it was not inclined to grant neighbors enforcement rights for
18 such an easement and that there has been no precedent for such a provision. The
19 Commission also added that neighbors may have the right to challenge or enforce the
20 restrictive covenant without the need for a specific provision required by the Planning
21 Commission.

22
23 Linda Whitehead (applicants attorney) noted concern with Mr. Ralli's recommendation
24 regarding deadfall within the restrictive covenant. Ms. Whitehead noted that deadfall
25 material should be permitted to be removed from the restricted landscape area. The
26 Commission agreed with this request noting that the restricted landscape area differed
27 from the wetland buffer restricted area. The landscape areas were intended to serve as
28 landscape screen buffers. The Commission noted that the proposed wetland buffer
29 restricted area was intended to act as a conservation easement whereby site conditions
30 would be left in their natural state to better support the functions of the wetland on the
31 adjacent sanctuary property.

32
33 The Planning Commission discussed the language of the proposed conservation
34 easement and requested that Vice-Chair Cummings and Corporation Counsel work on
35 the details of the easement to provide appropriate insurances for the proper
36 construction and installation of the common driveway serving as access for all of the
37 three proposed lots.

38
39
40 On a motion made by Michael Klemens, seconded by Peter Larr and carried by the
41 following vote:

42
43 AYES: Michael Klemens, Barbara Cummings, Hugh Greechan Peter Larr, Martha
44 Monserrate

45 NAYS: None

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1 RECUSED: None

2 ABSENT: Franklin Chu, Patrick McGunagle

3
4 the Planning Commission took the following action:

5
6 ACTION: The Planning Commission adopted a resolution conditionally approving
7 final subdivision application number SUB272.

5. Doyle Residence

8
9
10 Alan Pilch (applicant's consultant) provided a brief overview of the proposed project.

11
12
13 On a motion made by Michael Klemens, seconded by Peter Larr and carried by the
14 following vote:

15
16 AYES: Michael Klemens, Hugh Greechan, Peter Larr, Martha Monserrate

17 NAYS: None

18 RECUSED: Barbara Cummings

19 ABSENT: Franklin Chu, Patrick McGunagle

20
21 the Planning Commission took the following action:

22
23 ACTION: The Planning Commission set a public hearing wetland permit application
24 number WP141 for its next meeting on October 28, 2003.

6. 205 Grace Church Street

25
26
27 Linda Whitehead (applicant's attorney) stated that the site plan had been revised to
28 significantly reduce the amount of impervious area proposed within the wetland buffer.
29 Ms. Whitehead stated that the current plan proposes a 1,143 square-foot reduction in
30 the amount of impervious area within 100-foot buffer over existing conditions. Ms.
31 Whitehead stated that the revised plan would also shift the closest structure so that it
32 was no closer than eighty feet from the adjacent wetland. Ms. Whitehead stated that
33 the existing home is approximately fifty feet from the wetland edge. Ms. Whitehead
34 stated that the revised plan minimized impact to the buffer to the maximum extent
35 practical.

36
37
38 The Commission questioned whether the proposed gravel driveway was included in the
39 impervious surface calculation. Brad DeMotte (applicant's architect) stated that the
40 gravel was not included in the calculations.

41
42 The City Planner noted concern with the proposed grading along the western property
43 line. The City Planner noted that the proposed slope was steep making it prone to
44 erosion. The City Planner suggested that a retaining wall would be a better solution for

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1 this area. Brad DeMotte stated that the applicant would show a retaining wall on
2 revised plans.

3
4 The Planning Commission discussed the proposed terrace and requested that the plan
5 be revised to eliminate that portion of the terrace within the wetland buffer. Mr.
6 DeMotte responded that the plan revision would be made.

7
8 The Commission discussed the proposed driveway and recommended that a belgiam
9 block detail be shown to prevent gravel from eroding. The Planning Commission
10 requested that a deed restriction be provided for its review that prohibits the conversion
11 of the gravel driveway to a pervious pavement material. Ms. Whitehead agreed to
12 provide this information and the applicant agreed to provide all revised materials not
13 less than one week before the Commission's next meeting so that the public may have
14 the opportunity to review the plans.

15
16 The Commission agreed to set the public hearing but noted that it may keep the
17 hearing open depending on the extent of public comment.

18
19 The Commission agreed to set the public hearing but noted it may keep the hearing
20 open depending on the extent of public comment.

21
22
23
24 On a motion made by Martha Monserrate, seconded by Peter Larr and carried by the
25 following vote:

26
27 AYES: Barbara Cummings, Hugh Greechan Peter Larr, Martha Monserrate

28 NAYS: None

29 RECUSED: None

30 ABSENT: Michael Klemens, Franklin Chu, Patrick McGunagle

31
32 the Planning Commission took the following action:

33
34 ACTION: The Planning Commission set a public hearing wetland permit application
35 number WP137 for its next meeting on October 28, 2003.

7. Minutes

36
37
38
39
40
41 The Commission reviewed and approved minutes of its September 9, 2003 meeting.